

Battle Creek Zoning Board of Appeals

Staff Report

Meeting: May 10, 2011
Appeal #Z-04-11

To: Zoning Board of Appeals
Date: April 26, 2011
From: Glenn Perian, Senior Planner
Subject: Petition for a dimensional variance (Z-04-11) to permit the construction of a grotto 15'8" from a front property line on the open yard immediately west of the Parish Office Building located at 112 Capital Avenue NW.

Summary

This report addresses a petition from The Design Forum Inc., on behalf of the Archdiocese of Kalamazoo, seeking approval of a Dimensional Variance (Z-04-11), to construct a grotto 15'8" from the front property line at the general intersection of Capital Avenue NW and Cherry Street.

Background/Project Information

The subject site is located at 92 Capital Avenue NE. The subject lot is generally located at the corner of Capital Avenue NE and Cherry Street and is located in the O-1 "Office District". The minimum lot standards for the O-1 zone include a minimum lot width of 60 feet and a minimum lot area of 5,000 square feet. The subject lot meets the minimum width and lot area standard for the O-1 zone. Saint Philip Catholic Church is currently in operation at the location and a number of construction projects are occurring on the site. The request is to allow the construction of a grotto in the front yard, 15'8" from the front property line. The grotto is a place for prayer and contemplation housing the icon of the Virgin Mary and is intended to be a part of worship and education for the parish of St. Phil. The zoning ordinance states that structures in the O-1 zoning district must maintain a 30' setback in front yards.

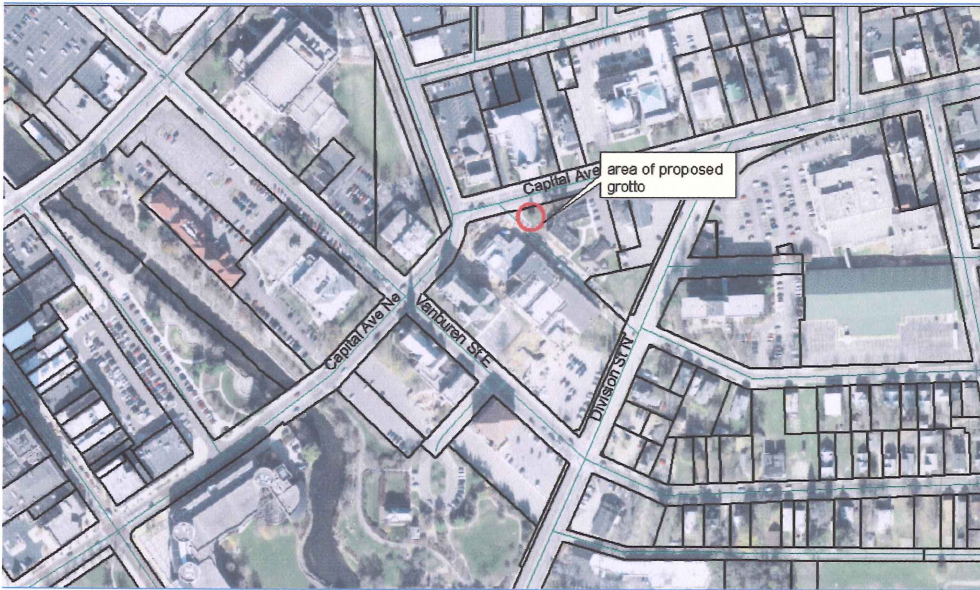
Legal Description

ASSRS PLAT OF HARTS SUP LOTS 33 THRU 50, ALSO LOTS 60, 61 & 62, EXC ELY 9 FT OF LOTS 34 THRU 38, THAT PORTION OF THE N 1/2 OF VAC CHERRY ST ADJ TO LOTS 49, 50 & 62, THAT PORTION OF THE S 1/2 OF VAC CHERRY ST ADJ TO LOTS 38 THRU 43, EXC BEG SLY LI OF LOT 34 DIST 9.53 FT NWLY OF SE COR OF SD LOT - NLY PAR WITH SD WLY LI OF DIVISION ST 15 FT - SWLY 24.53 FT - SELY ALG SLY LI OF SD LOT DIST OF 15 FT POB; PART OF VAC CAPITAL AVE: BEG NLY MOST COR OF LOT 43 OF SD PLAT - N 42° 41' 00" E 3.50 FT TO PT 'H' AS SHOWN ON RECORDED PLAT - S 73° 25' 00" W 68.91 FT - SWLY ALG ARC TO LT DIST OF 16.21 FT (RAD 14 FT; CHORD BRG S 40° 14' 44" W 15.32 FT) - SWLY ALG ARC TO RT DIST OF 65.94 FT (RAD 176.68 FT; CHORD BRG S 17° 46' 00" W 65.56 FT) - S 28° 27' 30" W 28.27 FT - N 42° 41' 00" E ALG SWLY LI OF LOTS 43 THRU 45 OF SD PLAT DIST OF 157.89 FT TO POB ((SD PART CAPITAL AVE ASSESSED AS ROW IN 1983 THRU 2010; SD TRIANGULAR PORTION OF LOT 34 ASSESSED AS 3880-00-052-0 IN 1983 THRU 2001; PART OF LOTS 37 & 38 ASSESSED AS #3880-00-055-0 IN 1983 THRU 2007; LOTS 50 & 60 ASSESSED AS #3880-00-084-0 IN 1983 THRU 2007; LOTS 49, 61 & 62 ASSESSED AS #3880-00-085-0 IN 1983 THRU 2007)).

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, April 21, 2011, not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on April 18, 2011, to 44 property owners and occupants located within 300 feet of the subject parcel. Planning staff has received no comments relative to this request.



Aerial Photograph of the Subject Site

Surrounding Land Uses

The subject property is generally located in a neighborhood of mixed office and residential uses, northeast of the downtown area.

Applicable Zoning Ordinance Provisions

Chapter 1234.04 (b) (1) authorizes the Zoning Board of Appeals to grant variations in the yard requirement of any district where there are unusual and practical difficulties in the carrying out of the requirements of the Zoning Code due to the irregular shape of the lot or topographical conditions, provided that such a variation will not seriously affect any adjoining property or the general welfare of the public; and

Chapter 1234.04 (b) (2) authorizes the Zoning Board of Appeals to grant variations, upon appeal, whenever a property owner can show that strict application of the provisions of the Zoning Code relating to the use of buildings or structures or to the use of land will impose upon them unusual and practical difficulties or hardship. This section requires that such variations of the strict application of this Zoning Code as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Master Plan, as established by the Zoning Code, and that the surrounding property will, at the same time, be properly protected.

Analysis

The Appellant is requesting a front yard setback variance along Capital Avenue NE that would authorize the construction of a grotto 15'8" from a front property line, contrary to limitations outlined in chapter 1278 of the Planning and Zoning Code. The Appellant has stated in the supporting material in the form of the application that the grotto needs to be constructed in the proposed location due to underground utilities in the preferred location. The Appellant has also stated that because of the construction of the new Parish Center addition, the original grotto had to be demolished. The Appellant has supplied additional reasons supporting the request for appeal and they are included with the application and part of this report. A site drawing has also been provided showing the proposed location of the grotto with dimensions to the front property line. Photos of what the grotto will look like have also been included.

Is there something unique about this lot or property that makes relief necessary? We would agree that by definition the lot meets the minimum standards for the O-1 zoning district. Considerable construction has been occurring on the St. Phil site and the grotto is part of that construction plan. The applicant has stated, and we agree, that other buildings in the immediate vicinity are located closer to the front property than what ordinance allows. The grotto will not be closer to the front property line than buildings of greater scale in the directly across the street.

Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, the Planning staff recommends that the Zoning Board of Appeals approve the Dimensional Variance (Z-04-11) based on the following findings contained in this staff report.

- 1) Staff finds that there is unusual and practical difficulty specific to the property in question. We understand that the lot meets the width and area standards for the O-1 district; the property is part of a campus setting for St. Phil and the grotto is just a small part of the overall project.
- 2) Granting the variance and thereby permitting the applicant to move forward with the project in spite of the fact it is not in compliance with the zoning ordinance will not seriously affect any adjoining property or the general welfare of the public. Furthermore, we have not heard from any neighbors objecting to the project.
- 3) Staff believes that if the variance in question is granted the property will still be in harmony with the general purpose and intent of the O-1 zoning district in that many of the older buildings in the neighborhood have been built closer to the road than what

current ordinance allows. Additionally, the grotto is intended to be an ornamental feature of the site.

- 4) Staff believes that if the Zoning Board grants the variance, the setback waiver will not serve merely as a convenience to the applicant and will alleviate some demonstrable practical difficulty so great as to warrant a variation to the Master Plan.

If the Zoning Board finds that all of the above conditions have been satisfied, then all of the following standards must be met, as well.

- 1) Staff believes that the Appellant has clearly demonstrated that practical difficulty will in fact exist if the variance is not granted. The property owner is willing, and continues to invest in the neighborhood.
- 2) Staff does not believe the appellant has created the practical difficulty associated with this request. In fact, the property owner would have preferred to maintain the original grotto, but due to underground utilities, the original grotto had to be demolished as part of the expansion.
- 3) Staff believes that the practical difficulties are exceptional and peculiar to the property of the person requesting the variance for the reasons stated in item #1 above.
- 4) Staff believes that the alleged practical difficulties result from conditions which do not generally exist throughout the City in that several buildings in this particular neighborhood are located closer than what is permitted by ordinance, and the church has been a fixture in the neighborhood for many, many years.
- 5) The Appellant has furnished documentation to indicate that practical difficulties do in fact exist. Staff believes that the furnished documentation relative to unique property conditions meet the standards outlined in the Zoning Code authorizing the Board to grant the variance.
- 6) Staff does not believe the term "practical difficulty" is deemed financial hardship in this case.
- 7) Staff believes the alleged practical difficulty which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case.
- 8) Staff believes that by allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the Zoning Code, the individual practical difficulties that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- 9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.

10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

Attachments

The following information is attached and made part of this Staff Report.

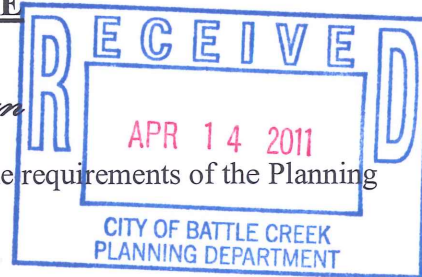
1. ZBA Petition Form (Petition #Z-04-11)
2. Plan showing the proposed location of the grotto
3. Photos of what the grotto will look like

Date: April 14, 2011

Appeal No. 2-4-11

APPLICATION FOR A VARIANCE
ZONING BOARD OF APPEALS

City of Battle Creek, Michigan



An Appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: The Design Forum Inc.

Address: 15 Ionia SW, Suite 250, Grand Rapids MI 49503

Phone: 616.454.1398

Name of Owner (if different from Appellant): Archdiocese of Kalamazoo

Address: 20 Cherry Street, Battle Creek, MI

Phone: 269.986.0380

TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to:
(Choose One) Extend Erect Waive Use Convert Enclose

Description: We are proposing to construct a grotto on the open yard immediately to the west of the Seton Center (Parish Office Building) which is located at 112 Capital. The yard is not large enough to allow the construction to meet the setback requirements of the zoning ordinance so we are requesting a waiver of those requirements.

Contrary to the requirements of Section(s) 1278.01 of the Planning and Zoning Code, upon the premises known as 112 Capital Ave. NE, Battle Creek, MI, in accordance with the plans and/or plat record attached.

The proposed building or use requires Board action in the following area(s):

Relief from the 30' setback in the front yard for construction of the proposed Grotto.

Property/Tax I.D. # No. 3880 - 00 - 056 - 0 **Size of the Lot:** Width 219.3 on Capital Depth 245.02' on Cherry

Size of Proposed Building: Width approx.. 34' Depth approx. 24' Height varies 2' up to 12'

The following reasons are presented in support of this appeal (complete each section):

- (a.) This property cannot be used in conformance with the ordinance without the requested variance because:

The current front yard does not offer enough room to construct the structure in compliance with the

Ordinance. The present building only has a 25'-9" setback where the ordinance requires 30'.

- (b.) This problem is due to a unique situation not shared in common with nearby property owners because:

As a part of a Parish for Catholic Worship and Education, the Grotto is a place for prayer and Contemplation housing the icon of the Virgin Mary. This is not something that is common to most other building types or property owners.

- (c.) Granting the variance would not alter the essential character of the area because:

It will be small scale and more of a landscape feature than a building. Many of the buildings in the area have setbacks less than the stated ordinance. This feature will not be closer to the sidewalk than buildings of much greater scale across the street.

- (d.) The problem is not self-created because:

The property is an existing lot. The original Grotto had to be demolished to make room for the new Parish Center Addition. Because of utilities in the ground on the school property, (where we would have Preferred to construct it), the Grotto could not remain on that side of Cherry Street.

- (e.) **USE VARIANCES ONLY** It is not possible to use this particular property for any other use currently allowed in the zoning district because:

*I hereby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. **In addition, I give permission to the City of Battle Creek's Planning Department staff to access my property, if necessary, to take photographs of the subject of this appeal.***

Neale L Bauman (for The Design Forum Inc.)

(Print Appellant Name)



(Signature of Appellant)

15 Ionia SW, Suite 250, Grand Rapids, MI 49503 (616.454.1398)

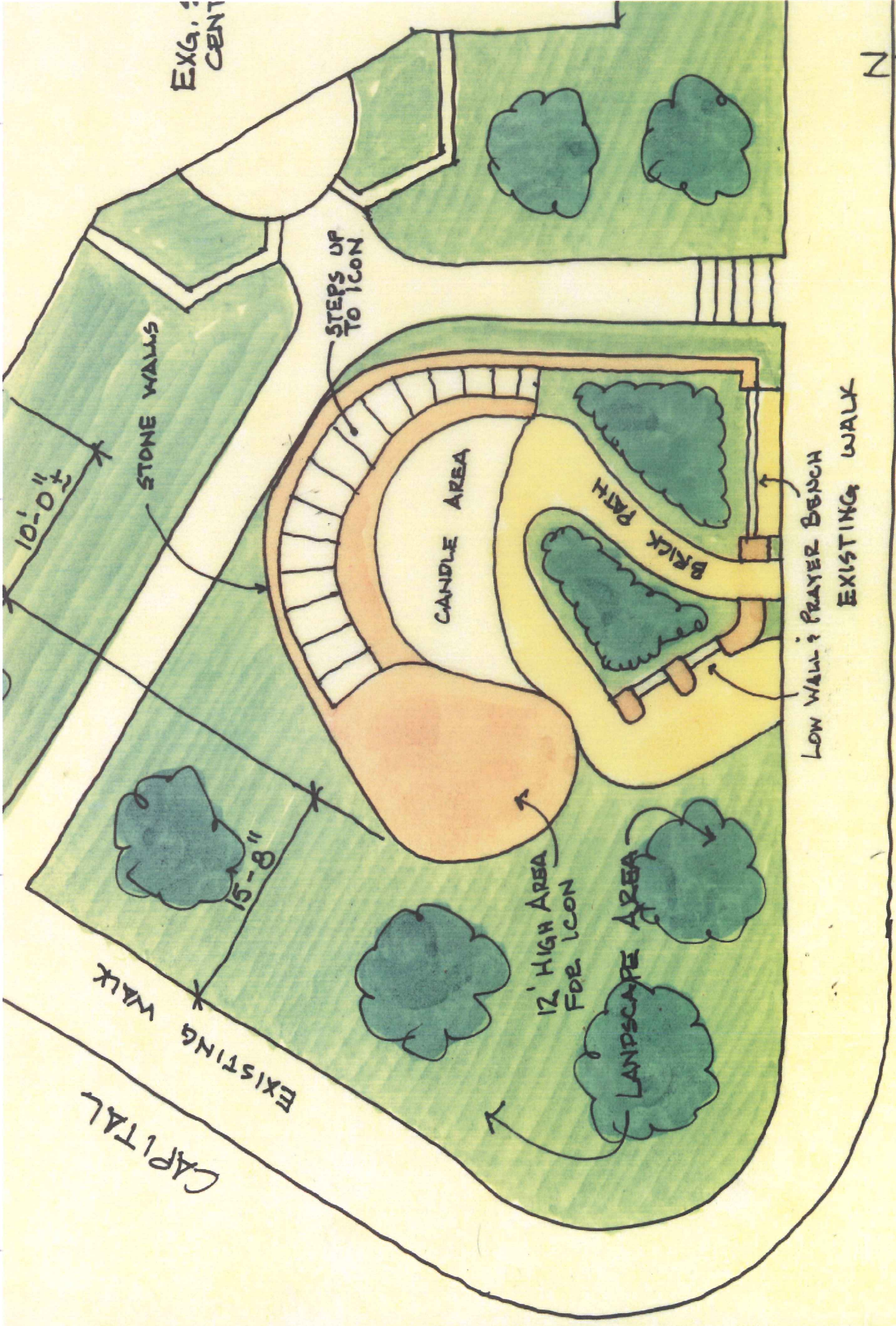
(Address of Appellant)

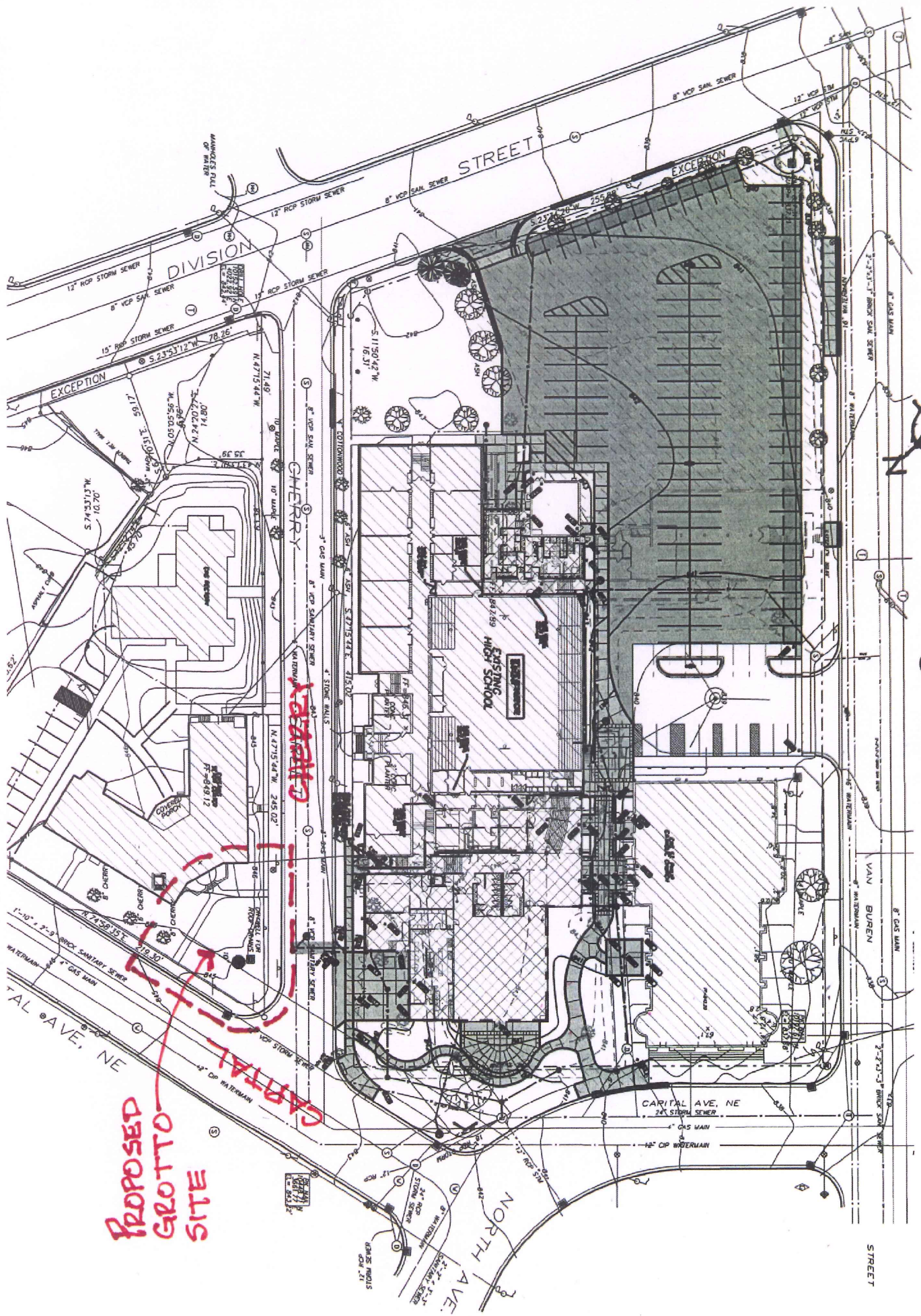
If you require additional information or assistance in filling out this application, please contact the Planning Department at (269) 966-3320.



CHERRY

GROTTO PLAN
 $\frac{1}{8}'' = 1'-0''$





OVERALL SITE PLAN

NO SCALE



